



January 24, 2022

TO: Department Directors, City and County of San Francisco
FROM: Carmen Chu, City Administrator
SUBJECT: Updated City Contractor Vaccination Policy dated January 24, 2022

**This updated Contractor Vaccination Policy dated January 24, 2022
supersedes the prior Contractor Vaccination Policy dated December 2, 2021**

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I. Introduction

According to the Centers for Disease Control and Prevention (CDC), the California Department of Public Health (CDPH), and the San Francisco County Health Officer, COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated. Certain safety measures remain necessary to protect against COVID-19 cases and deaths. According to the CDC, vaccination is the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths. The spread of the Delta, Omicron and other variants around the world brings a new urgency to increasing vaccination rates.

City policy requires all City employees to be vaccinated against COVID-19 no later than November 1, 2021, with some employees subject to earlier deadlines depending on their work location and duties. To create consistency with City employee vaccine and return-to-work requirements and ensure all on-site personnel are protected from COVID-19, on October 8, 2021, Mayor London Breed issued the Thirty-Eighth Supplement ("Order") to the Mayoral Proclamation Declaring the Existence of a Local Emergency. The Order requires Covered Employees, as defined herein, to be fully vaccinated or granted a medical or religious exemption.. The Order also requires the City Administrator to adopt a policy setting out processes and procedures for City departments and contractors to implement the requirements of the Order (the "Contractor Vaccination Policy").

On December 2, 2021, the City Administrator adopted a Contractor Vaccination Policy that created a procedure for compliance with the Order, specified a process for departments to grant waivers from the vaccination requirement in limited circumstances, and provided additional guidance. This updated Contractor Vaccination Policy dated January 24, 2022 supersedes the policy issued on

December 2, 2021. This updated policy makes the following key revision: An Attestation Form from a Contractor with Covered Employees is no longer required for Contracts executed on or after January 1, 2022. Instead, the Contractor's obligations under the Contractor Vaccination Policy will be incorporated into the terms and conditions of any Contract with Covered Employees.

II. Definitions

Contract. A "Contract" is defined under the Order as an agreement between the City and any other entity or individual and any subcontract under such agreement, *where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the Agreement at a City owned, leased, or controlled facility.* Such agreements include professional services contracts, general services contracts, public works contracts, and grants. "Contract" includes such agreements currently in place or entered into during the term of the Order. "Contract" does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving City funds. For purposes of this policy, "Contract" includes purchase orders that meet the definitions and criteria herein.

Covered Employee. Covered Employee is an employee of a contractor or subcontractor working at a City owned, leased, or controlled facility who:

- (a) works in an indoor office workspace where City employees regularly work for more than 4 cumulative hours in a day, more than 15 cumulative hours in a 7-day period, or more than 20 cumulative hours in a 14-day period, **or**
- (b) regularly works within six feet of one or more City employees, for more than 4 cumulative hours in a day, more than 15 cumulative hours in a 7-day period, or more than 20 cumulative hours in a 14-day period

For the purpose of this definition, "indoor office workspace" includes open-plan office space and office suites with shared commons spaces such as hallways, conference rooms, and break rooms, but does not include separate public space in an office building, such as a bathroom, elevator, or lobby.

Also, for the purpose of this definition, a sole proprietor contractor qualifies as a Covered Employee.

III. Compliance Procedures

A. Departments with Existing Vaccination Policies for Contractors.

Departments with existing vaccination policies for contractors are not required to follow this Contractor Vaccination Policy, *provided the department's policy is more protective of the public health or safety than this policy* (for example, requires more of the contractor's employees to be vaccinated than required under this Contractor Vaccination Policy which is limited to Covered Employees only). Contracts subject to the Health Officer's order governing high-risk settings,

such as certain health care facilities, homeless shelters, and jails, are not subject to this Policy. Similarly, the Airport is not required to follow this Contractor Vaccination Policy.

B. Attestation Process for Contracts with Covered Employees

- (1) **For Contracts executed before January 1, 2022**, Departments were authorized to either (1) require Attestation Forms only from contractors with Contracts with Covered Employees, or (2) ask all contractors to complete an Attestation Form. Attestation Forms were due by December 31, 2021 and Departments should continue to collect them.
- (2) **For Contracts executed on or after January 1, 2022**, Departments will no longer collect Attestation Forms. Instead, they must now include compliance with the Contractor Vaccination Policy in the terms and conditions of Contracts with Covered Employees. Departments may, at their option, also include information about the Contractor Vaccination Policy in their solicitation materials.
- (3) **Contractor Obligations:** Contractors shall adhere to the following process to ensure compliance with the Contractor Vaccination Policy:
 - a. **Covered Employee List:** Contractors shall identify and maintain a list of all Covered Employees working on the Contract, including employees of their subcontractors. *The list should be limited to the names of the Covered Employee and should not include their vaccination status.* Contractors must update the list as needed. Contractors must provide the list to City upon request.
 - b. **Vaccination Status of Covered Employees:** Contractors shall determine the vaccination status of their Covered Employees, including employees of their subcontractors. In so doing, Contractors must ensure that their Covered Employees, including those of subcontractors, submit required information to the Contractor to demonstrate the Covered Employees comply with the Vaccination Policy.
 - c. **Contractor Granted Exemptions for Medical and Religious Reasons:** Contractors may grant Covered Employees exemptions from the City's vaccination requirements for qualifying medical reasons or religious beliefs. If a Contractor grants an exemption, the Contractor must notify the City department of such exemption and provide the information concerning the Covered Employee's job duties and work location requested in the Covered Employees Granted Exemptions Form which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form). The department will then determine whether the Covered Employee for whom an exemption has been granted can be reasonably accommodated with appropriate safety precautions consistent with those that the City affords at the work setting where the Covered Employee will be working, including a testing protocol if the City department has imposed such a requirement on exempt City employees.

(4) Escalation Path due to Non-Compliance

Departments are responsible for verifying Contractor compliance and working with the City Attorney's Office to determine the consequences in the event of noncompliance. Escalations may include, but are not limited to:

- For Contracts in effect before January 1, 2022, allowing the Contractor additional time to submit the Attestation Form when it was required by the department;
- Modifying the timing and location of work performed under the Contract with Covered Employees, if appropriate;
- Allowing the Contractor additional time to have Covered Employees vaccinated while receiving weekly testing;
- Allowing the Contractor additional time to replace staff
- Terminating the Contract; or
- Not moving forward with Contract negotiation.

IV. Waivers

The Order requires the City Administrator to create a process for departments to grant contractors waivers from the vaccination requirement and to specify the grounds upon which a department may grant such waiver. A Department Head, or the Department Head's designee, may waive compliance with the Order and this Contractor Vaccination Policy only upon finding that one or more of the following apply:

- The goods or services procured under the Contract with Covered Employees are available from only one source;
- The Contract with Covered Employees is necessary to respond to an emergency;
- The Contract with Covered Employees is for a service, project, or property that is essential to the City or the public; or
- The public interest warrants the granting of a waiver because of an adverse impact on services or a substantial adverse financial impact on the City.

V. Communications

The City Administrator's Office will maintain a website at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> with additional guidance and communications for vendors.